IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1825 OF 2005

Rajendrakumar M. Gandhi ...Petitioner.

Versus

Prashant R. Lupane & Ors. ...Respondents.

Shri G.S.Godbole for the Petitioner.
Shri Khairdi for respondent No.1.
Shri Surel S. Shah for respondent No.2.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 21st FEBRUARY, 2006.

P.C. :

1. Heard Shri Godbole - learned Counsel appearing for the petitioner, Shri Khairdi - learned Counsel appearing for respondent No.1 and Shri Shah - learned Counsel appearing for respondent No.2.

2. In my view, the contention of the petitioner that an application of the present nature, made during the course of proceedings, under Order XXI Rule 97 of the Code of Civil Procedure, is not maintainable has some substance, but, it is not necessary to pronounce upon this issue as that would only prolong the agony of the petitioner-auction purchaser.

3. This is an application made during the course of proceedings wherein the first respondent objects to the execution of the decree passed in favour of the second respondent Bank.

4. In such proceedings, apprehending that the decree would be enforced, the application of the aforesaid nature is made. The order under challenge is passed on 8th December, 2004. I am informed by the learned Counsel appearing for the parties that Misc.Application No.340 of 2004 is still pending before the Executing Court.

5. In the above circumstances, interest of justice would be served if the hearing of Misc.application No.340 of 2004 is expedited and the Executing Court is directed to dispose of the same within a period of six months from the date of receipt of copy of this order.

6. It is clarified that all contentions on merits of both sides are expressly kept open for being urged in these proceedings and the order under challenge as well as the observations therein would not prevent the Executing Court from passing appropriate orders in accordance with law. Petition disposed of.

7. It is directed that the Executing Court, before whom, application preferred by the second respondent Bank, viz., Special Darkhast No.20 of 2004 as also Application of the petitioner for removal of obstruction/possession bearing C.M.A.No.290 of 2004, are pending, shall decide them alongwith Misc.Application No.340 of 2004.

(S.C.DHARMADHIKARI,J.)